



CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
200 East Santa Clara Street
San José, California 95113
Telephone (408) 535-1260
FAX (408) 292-6207

City Clerk

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSE)

I, Lee Price, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that "**Ordinance No. 28773**", the original copy of which is attached hereto, was passed for publication of title on the **22nd day of June, 2010**, was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the **11th day of August, 2010**, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA, KALRA,
LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

VACANT: NONE.

Said ordinance is effective as of **7th day of September, 2010**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **12th day of August, 2010**.

(SEAL)

LEE PRICE, MMC
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

/rmk

ORDINANCE NO. 28773

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING PARTS 1 AND 5.5 OF CHAPTER 3.36 OF TITLE 3 OF THE SAN JOSE MUNICIPAL CODE RELATING TO THE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN TO ADD NEW SECTIONS 3.36.130 AND 3.36.140 DEFINING "LIMITATION YEAR" AND "PLAN YEAR" AND REVISING SECTION 3.36.730 TO CLARIFY PROVISIONS RELATED TO INTERNAL REVENUE CODE LIMITATIONS ON PENSION BENEFIT CALCULATIONS

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Part 1 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended by adding a new section to be numbered, entitled and to read as follows:

3.36.130 Plan Year

"Plan year" means the consecutive 12-month period beginning on July 1 and ending on June 30 of the following calendar year.

SECTION 2. Part 1 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended by adding a new section to be numbered, entitled and to read as follows:

3.36.140 Limitation Year

"Limitation year" means the calendar year.

SECTION 3. Section 3.36.730 of Part 5.5 of Chapter 3.36 of the San José Municipal Code is hereby amended to read as follows:

3.36.730 Benefit Limitations

A. General.

Notwithstanding any other law, the benefits payable to any person who becomes a member of this plan on or after January 1, 1990, shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code as applicable to governmental plans and as set forth in this Section 3.36.730.

B. Prior to January 1, 1990.

Notwithstanding any other law, the benefits payable to any person who became a member of this plan prior to January 1, 1990, shall be subject to the greater of the following limitations as provided in Section 415(b)(10) of the Internal Revenue Code:

1. The limitations set forth in Section 415 of the Internal Revenue Code; or
2. The accrued benefit of the member without regard to any benefit increases pursuant to any amendment of this plan adopted after October 14, 1987.

C. Participation in Other Qualified Plans: Aggregation of Limits

The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in section 414(j) of the Internal Revenue Code maintained by the member's employer in this plan shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one (1) plan.

D. Basic 415(b) Limitation

1. Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in section 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in section 415(b) of the Internal Revenue Code and subject to any additional limits that may be specified in the retirement system. In no event shall a member's benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to section 415(d) of the Internal Revenue Code and the regulations thereunder.

2. For purposes of section 415(b) of the Internal Revenue Code, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined in section 415(b)(2)(A) of the Internal Revenue Code). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

E. Adjustments to Basic 415(b) Limitation for Form of Benefit

1. If the benefit under the plan is other than the form specified in subsection D.2., then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.
2. If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date as specified in c below, or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation section 1.415(b)-1(c)(2)(ii)) that takes into account the additional benefits under the form of benefit as follows:
 - (a) For a benefit paid in a form to which section 417(e)(3) of the Internal Revenue Code does not apply (i.e., a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of:
 - (i) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member, or
 - (ii) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in section 417(e)(3)(B)

of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code);

- (b) For a benefit paid in a form to which section 417(e)(3) of the Internal Revenue Code applies (i.e., a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of:
 - (i) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;
 - (ii) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality table for the distribution under Treasury Regulation section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code); or
 - (iii) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1, 2009, the applicable mortality rate for the distribution under Treasury Regulation section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent

Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after

December 31, 2008, the applicable mortality tables described in section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code), divided by 1.05.

- (c) The actuary may adjust the 415(b) limit at the annuity starting date in accordance with the above sections a and b.

F. Benefits For Which No Adjustment of 415(b) Limit is Required

For purposes of this Section, the following benefits shall not be taken into account in adjusting these limits:

1. Any ancillary benefit which is not directly related to retirement income benefits;
2. That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;
3. Any other benefit not required under section 415(b)(2) of the Internal Revenue Code and Treasury Regulations thereunder to be taken into account for purposes of the limitation of section 415(b)(1) of the Internal Revenue Code.

G. Other Adjustments in 415(b) Limitation

1. In the event the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this Section shall be reduced in accordance with Treasury Regulations pursuant to the provisions of section 415(b) of the Internal Revenue Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) (as adjusted) annual benefit beginning at age sixty-two (62).
2. In the event the member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department, on fifteen (15) years of military service, or on any combination of these two types of service, the adjustments provided for in 1 above shall not apply.
3. The reductions provided for in 1 above shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

H. Less than Ten (10) Years of Service Adjustment for 415(b) Limitations

The maximum retirement benefits payable to any member who has completed less than ten (10) years of participation shall be the amount determined under subsection D multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten (10). The reduction provided by this subsection cannot reduce the maximum benefit below 10%. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

I. Ten Thousand Dollar (\$10,000) Limit

Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed ten thousand dollars (\$10,000) for the applicable limitation year and for any prior limitation year and the employer has not at any time maintained a qualified defined contribution plan in which the member participated.

J. Effect of COLA without a Lump Sum Component on 415(b) Testing

Effective on and after January 1, 2008, for purposes of applying the limits under section 415(b) of the Internal Revenue Code (the "Limit") to a member with no lump sum benefit, the following shall apply:

1. a member's applicable Limit shall be applied to the member's annual benefit in the member's first limitation year without regard to any cost of living adjustments under Section 3.44.150;
2. to the extent that the member's annual benefit equals or exceeds the Limit, the member shall no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the Limit; and
3. thereafter, in any subsequent limitation year, a member's annual benefit, including any cost of living increases under Section 3.44.150, shall be tested under the then applicable benefit Limit including any adjustment to the section 415(b)(1)(A) of the Internal Revenue Code dollar limit under section 415(d) of the Internal Revenue Code, and the regulations thereunder.

K. Reduction of Benefits Priority

Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such member.

L. Notwithstanding subsections A. and B. above, in the event Section 415 of the Internal Revenue Code is repealed, amended or qualified, by statute or otherwise, to permit all or any members of this plan or such members' beneficiaries to receive benefits that are not subject to the limitations set forth in Section 415, then immediately thereupon, such benefits shall be paid to such members or their beneficiaries.

M. Section 415(C) Limitations On Contributions And Other Additions

After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of \$40,000 (as adjusted pursuant to section 415(d) of the Internal Revenue Code) or 100% of the member's compensation. Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to picked-up employee contributions that are paid to the retirement system.

"Compensation" for purposes of this section, subject to annual limits under section 401(a)(17) of the Internal Revenue Code, shall be as defined under Treasury Regulation section 1.415(c).

PASSED FOR PUBLICATION of title this 22nd day of June, 2010, by the following vote:


AYES: CHIRCO, CHU, HERRERA, KALRA, LICCARDO,
NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: CAMPOS, CONSTANT.

DISQUALIFIED: NONE.

ATTEST:



LEE PRICE, MMC
City Clerk



CHUCK REED
Mayor